IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.564 OF 2007
IN
WRIT PETITION NO.1285 OF 2007

Shri Prabhakar C. Patel. ..Petitioner.

V/s.

M/s.Rai Plating Works & anr. ..Respondents.

Mr. Dinesh Kumar Shukla for petitioner/in support.

Mr.Mahesh Shukla for respondents.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 14, 2007.

P.C. :

1. Although the explanation offered in the affidavit in support of the Motion is unacceptable, inasmuch as the position, which emerges from the office record is that the matter was listed on 23rd July, 2007, on which date, none appeared when the matter was called out. Eventually, the Court by way of indulgence placed the matter on 25th July, 2007. Even on 25th July, 2007, none appeared for the Petitioner, as is noted in the Order dated 25th July, 2007. The Petitioner taking advantage of the fact stated in the Order dated 25th July, 2007 that the matter was listed "yesterday" instead of mentioning that it was listed on "day before yesterday" has

conjured argument as stated in the affidavit in support of the Motion. Such attitude cannot be countenanced. Advocate for the Petitioner has no explanation to offer as to why they remained absent on 23rd July, 2007 when the matter was listed for the first time before the Court. Be that as it may, as the litigant should not suffer for the mistake of the advocate, the Motion is made absolute in terms of prayer clause (a), on condition that the Advocate on record for the Petitioner shall "personally" pay costs quantified at Rs.5,000/-to High Court Legal Services Committee within one week from today, failing which the Office to proceed on the assumption that this Motion is dismissed for non-prosecution.

2. If the cost is paid in time, Writ Petition shall stand restored to its original number, to be proceeded further and be placed for admission on 15th January, 2008.

(A.M.KHANWILKAR,J)